Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-520

MICHAEL S. ROSS, Petitioner

v.

UNITED STATES OF AMERICA, et. al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE SUPREME COURT

OF THE UNITED STATES

MICHAEL S. ROSS,	CIVIL NO. 74-3095-RF
Plaintiff,	APPELLATE NO.S
vs.	75-2154, 75-2155,
COMMANDER JERRY J. HOLST, THE UNITED STATES OF AMERICA, et al.,	76-1986
Defendants.	PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUDGES OF THE

SUPREME COURT OF THE UNITED STATES:

Petitioner, Michael S. Ross, respectfully prays for a writ of certiorari to the

United States Court Of Appeals For the Ninth Circuit to review an order of that Court entered March 30, 1978 sustaining all the defendant's motions herein for failure to state a claim upon which relief could be granted, bar by the statute of limitations, res judicata and collateral estoppel.

SUMMARY OF LOWER COURT OPINIONS

Plaintiff inaugurated the within action, 74-3095-RF, on October 25, 1974, after dismissing all unnamed defendants previously, on the very eve of the much belated and wrongfully founded conclusion of the Court Of Claims in ROSS v. U. S. A., 352-73, (1974) of March 15, 1974 and petition for rehearing on July 24, 1974 that plaintiff's identical a priori action in the Federal District Court For the Central District Of California, 72-415-RJK did not constitute

plaintiff's "day in court," nor toll the running of the statute of limitations, U. S. C., Title 28, Section 2501 as opposed to U. S. C., Title 28, Section 2401 on the continuing duty to pay obligation of the United States Navy upon plaintiff's continuous reserve commissioned officer and electronics technician service over a period of forty (40) years after six years of demand for compliance with the law by all members of NRSD 12-26, the Commandant Of the Twelfth Naval District and the Chief Of Naval Personnel.

After extensive procedural maneuvering on numerous motions to dismiss launched by nearly all attorney defendants, on December 31, 1975 the Honorable Judge Robert Firth finally issued judgment dismissing the action as to all defendants for the reasons of bar by the California two year statute of limitations,

failure to state a claim upon which relief can be granted, res judicata and collateral estoppel.

Appeal to the Ninth Circuit Court Of Appeals was perfected by plaintiff on January 7, 1976.

And on March 30, 1978, the Ninth Circuit Court Of Appeals denied plaintiff's appeal without argument and without opportunity for rehearing.

On April 7, 1978, plaintiff perfected appeal to this Court. The Ninth Circuit Court Of Appeals decision is, as yet, un reported and the same together with the unreported District Court opinion appear as addendum hereto as Appendix A and B, respectively.

JURISDICTION TO REVIEW

The judgment of the Ninth Circuit

Court Of Appeals was entered on March 30, 1978 without possiblity of rehearing. See Appendix A, infra. This petition for certiorari was filed less than ninety (90) days from the date aforesaid. Jurisdiction of this Court is invoked under the provisions for civil appeal of U. S. C., Title 28, Section 1651 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V:

> "No person shall . . . be compelled in any criminal case to be a witness against himself, nore be deprived of life, liberty, or property, without due process of law.

Constitution of the United States, Amendment VI;

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously been ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistant of Counsel for his defense.

QUESTIONS PRESENTED

1. Whether as an extension to pre-existing obligations owed to plaintiff, these defendants are not still liable for the perpetuation of defamation against plaintiff for the instant period and possibly permanently?
2. Whether as intiated against the remaining defendants, the incident action is not timely in that it seeks to recover for defamation and malpractice from the very moment the Court Of Claims made those deroations of plaintiff's character, ostensibly, permanent?
3. Is plaintiff entitled to release from all military obligation and consequences thereof in January, 1966 upon the inability of the United States attorney to prosecute theives of military compensation and plaintiff's own automatic occupational deferment from the petroleum industry?

REASONS FOR GRANTING THE WRIT

The ignorance, incompetency and criminal irresponsibility of these attorny and military defendants is unparalleled in the annals of human history and abhorently deplorable. If the attorney defendants herein agree to forego an automatic $10,000.00 fee, all well and good, provided there are no criminal sanctions implimentable against plaintiff.

But the recourse resorted to by all these opposition parties, without exception, is the imposition of criminal, i. e. violent sanctions, to coerce plaintiff's compliance with their personal wishes, in conjunction with the attendant

theft of plaintiff's funds. Since the punishment for religious and unwavering attendance at a non-performing unit is the automatic loss of electronic technician third and second class rating, time and resultant grade point average and thus future income, ROC guidelines, IV. C. 5:

> ROC IV. C. 5. Guidelines for drill participation for ROC personnel effective 1 July, 1972, will be as follows:

ROC's, enlisted prior to July, 1972 (under 2 X 6 contract)	May drill voluntarily
ROC's enlisted after 1 July, 1972	Drill not authorized
ROCONE's	May drill voluntarily

and incident upon a finding of misconduct,

U. S. C., Title 32, Section 933, or disenchantment with one particular component of the naval reserve is, in the alternative, the automatic and forced loss of in excess of $20,000.00 in income over the period of active duty together with an attendant loss of from $40,000.00 to $60,000.00 in reserve service income while fighting, in battle, for the very party effecting this end of theft or spending up to five years in the federal penitentiary, see BLAND v. CONOLLY, 110 U. S. App. D. C. 375, 293 F. 2d. 852, (1961), CONN v. U. S., 180 Ct. Cl. 120, 375 F. 2d. 818, (1964), U. S. v. DELANO, 436 F. 2d. 1199, (1971), U. S. v. FISHER, 413 F. 2d. 1034, (1969), U. S. v. FOSTER, 439 F. 2d. 29, (1971), U. S. v. GRAVES, 252 F. 2d. 818, (9th Circuit, 1958), GREENE v. McELROY, 360 U. S. 474, 79 S. Ct. 1400, 3 L. Ed. 2nd. 1372, (1959).

As such, under the Fifth Amendment to the United States Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life, or limb, nor shall be compelled in any criminal case to be a witness against himself nor be deprive of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation."

such action requires not only a trial to avoid constituting a criminal act, but also under the Miranda decision, Miranda v. State Of Arizona, 16 L. Ed. 2d. 694, 86 S. Ct. 1603, 384 U. S. 436, (1966), plaintiff herein was absolutely entitled to competent and military law knowledgeable counsel. This he was repetitively refused, yet insofar as he, or anyone else, is able to uncover have required, U. S. v. Winters, 281 F. S. 289, (1968), where the Court held that the failure of a reservist to attend scheduled drills or training periods or annual active dury as a result of illness or emergency beyond the individual's control, may be excused and that U. C. M. J., Title 32, C. F. R. Section 101.5 provides that no individual enlisted in the Reserves in a draft-deferred status should be certified to the selective service system for induction for two years of active duty

to the selective service system for induction for two years of active duty unless application of the forty-five (45) day compliance measure has failed to induce satisfactory performance of training duty," p. 293, U. S. v. Schatten, 419 F. 2d. 187, (1970) wherein "The Court Of Appeals Celebreeze Circuit Judge held that commanding officer's failure to give Marine Corps reservist hearing to determine whether reservist's absence from certain unit drills, which reservist alleged that he had missed due to lack of notice and for medical reasons, should be recorded as unexcused and refused, after reservist had been informed that commandant would involuntarily activate reservist, to grant reservist's request to take the matter up with the reservist's superior was violative of statute which subjects commanding officer's discretion over absences to military review and Marine

Corps bulletin to have Marine Corps to permit his to avail himself of Marine Corps review procedures, in U. S. v. Schmitt, 413 F. 2d. 219, (1969) where at page 266 the Court reiterated, "It would seem that a certification order based upon the indiscriminatory considerations would also taint the induction order and that courts should not be foreclosed from exploring such allegations," in Nixon v. Secretary Of the Navy, 422 F. 2d. 935, (1969), wherein the Court found that "The Navy is bound by its own validly promulgated regulations and federal district courts are free to entertain suits by servicemen requesting compliance with such regulations," Which were defined in U. S. v. Weber, 288 F. S. 492, (1968) to be, "seventeen (17) days of active duty for training and 90% reserve meeting attendance and not changed

until U. M. and T. S. A. of 1967, 50 U. S. C. A., App. Section 460 (b), (3) U. S. C. A., Fifth Amendment," in U. S. v. Metz, 304 F. S. 207, (1969), "Court must inquire into an activation order for unsatisfactory performance in the reserves only so far as to determine whether the military has acted within its jurisdiction and U. S. v. Scoffied, 297 F. S. 1353, (1969), " It has been a relatively immutable principle that where governmental action seriously injures and individual and reasonableness of that action depends on factual findings evidence used to prove govenrment's case must be disclosed to individual so that he has an opportunity to show that it is untrue, U. S. C. A., Constitutional Amendment Number 6, Williams v. Zuchert, 371 U. S. 531, 83 S. Ct. 403, 9 L. Ed. 2n. 486, rehearing 372 U. S. 765, 83 S. Ct. 102, 10 L. Ed. 136,

(1963), Greene v. McElroy, 360 U. S. 474 79 S. Ct. 1400, 3 L. Ed. 2nd. 1377, (1959), Bland v. Conolly, 110 U. S. App. D. C. 375, 293 F. 2d. 852, (1961), Conn v. U. S., 180 Ct. Cl. 120, 375 F. 2d. 878, (1967), While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be prejudice or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealosy. We have formalized these protections in the requirements of confrontations and cross-examinations. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right to be confronted with the witnesses against him. This Court has been zealous to protect these

rights from erosion. It has spoken out not only in criminal cases , * , but also in all types of cases where administrative and regulatory actions were under scrutiny,"

Which action could also have been accomplished by the Veterans Administration, complying with their hearing and evidence statutes, at least, no later than July, 1967.

Nonetheless, over the tour of reserve duty from 1963 until 1966, plaintiff made repetitive overtures to civilly compel NRSD 12-26 into compliance with sanity, the navy reserve obligation and mission,

"C.F. R., Title 32, Section 700.102. Objectives. The fundamental objectives of the Department of the Navy, within the Department Of Defense, are (a) to organize, traing, equip, prepare, and maintain the readiness of Navy and Marine Corps forces for the performance

of military missions as directed by the President or the Secretary of Defense, and (b) to support Navy and Marine Corps forces, including the support of such forces and the forces of other military departments, as directed by the Secretary of Defense, which are assigned to unified or specified commands. Support, as here used, includes administrative, personnel, material and fiscal support, and technological support through research and development."

and navy and federal laws and regulations,

C. F. R., Title 32, Section 713.1.

Subpart A. Naval Reserve. Mission.

"The mission of the Naval Reserve is to provide trained units and qualified individuals to be available for active duty in time of war or national emergency

and at such other times as the national security may require, to meet the requirements of the Naval Establishment in excess of the Regular component during and after the perior needed for procurement and training of additional trained units and qualified individuals to achieve the planned mobilization," in the only forms then available to plaintiff, demand for a trial of the non-performance activities of NRSD 12-26--plaintiff's platoon officer even had the audacity to admonish plaintiff that there was nothing he personally, or plaintiff could do to alleviate the oppression of non-performance of training activities at NRSD 12-26, obviously compulsion of Commander Jerry J. Holst for an order

and at such other times as the national security may require, to meet the requirements of the Naval Establishment in excess of the Regular component during and after the period needed for procurement and training of additional trained units and qualified individuals to achieve the planned mobilization,"

in the only forms then available to plaintiff, demand for a trial of the non-performance activities of NRSD 12-26--plaintiff's platoon officer even had the audacity to admonish plaintiff that there was nothing he personally, or plaintiff could do to alleviate the oppression of non-performance of training activities at NRSD 12-26, obviously compulsion of Commander Jerry J. Holst for an order for NRSD 12-26's performance, i. e. writ of mandate, for a breach of contract by NRSD 12-26, transfer away from NRSD 12-26, release, or

release from attendance at NRSD 12-26.

Immediately, then at any time plaintiff is able to gain access to a responsible tribunal, he is automatically able to convince that authority of his sincerity in desiring to remain in the enjoybale and remunerative economic situation in a three (3) year already trained officer commitment.

Plaintiff's demands from the Veterans Administration and Dr. Carden and $2,600.00 from attorney Lincoln N. Mintz in his intial incursion into the legal arena in August, 1971 were $70,000.00 and $500,000.00, respectively. After discovery of the proper and only legitimate resolution of these matters by a correction suit in February, 1972, plaintiff sought $20,000.00 from Richard Bryson and Greene & Pancer, $10,000.00 additional from attorney Lincoln N. Mintz of Mintz, Giller, Himmelman & Mintz and $25,000.00 from the

State Of California. This aggeegate of $85,000.00 to which plaintiff was and is entitled before February, 1972, plust $70,000.00 from the Veterans Administration and $500,000.00 from Dr. Carden, a correction of plainfiff's military record to show reinstatement of and continuity of plaintiff's naval reserve officer service from July, 1965 and third class electronic technician status from December, 1963, removal of all criminal stigma from plaintiff's record, and institution of criminal records and sanctions imposed against Commander Jerry J. Holst and Dr. Norman L. Carden.

Also, the only jury trial of this case has seen the jury sympathize with plaintiff against attorney Lincoln N. Mintz over the latter's grossly negligent and criminal reppesentation of plaintiff in criminal action number 75-59079, in Contra Costa County Superior Court, (Appendix C), in which the State Of

California Attorneys, Attorney General, Judge and defense counsel are the real criminals.

This is all in addition to a normal $10,000.00 to $20,000.00 annual salary that would otherwise continually be accruing to plaintiff as compensation for this work in a chemical engineering research capacity at Gerber Products Company plus $40,000.00 to $60,000.00 of naval officer and electronics technician reserve compensation from August, 1969, a lost gradepoint average from in excess of 3.0 and opportunity for doctoralship, two years of lost experience in petroleum research and development, two years of law school tuition at $2,000.00 per year, court costs and plaintiff never being granted the opportunity of defending his own innocence.

Indubidably then, at any point plaintiff was given control of his own case, in the course of NRSD 12-26 activities, as he has since

infallibly demonstrated in the Courts, he would have necessarily emerged victorious.

Subsequent losses are only an excalation of intial non-payment and perpetuation by dilatory action of the United States District Court For the Central District Of California.

CONCLUSION

For these reasons, it is respectfully submitted that a writ of certiorari should issue to review, reverse and remand the judgment and opinion of the Ninth Circuit Court Of Appeals and incarcerate messers Commander Jerry J. Holst, one un-named electronics technician first class, Lieutenant G. Y. Marriner, Lieutenant Commander Mary L. Brown, Captain Norman L. Carden, attorneys Craig Hosmer, James T. Satchell, John M. Vaisey, for the State Of California, Eason Monroe, of the American Civil Liberties Union, all attorney of

United States Of America, Richard Bryson of the attorney firm of Greene & Pancer, Lincoln N. Mintz, of the attorney firm of Mintz, Giller, Himmelmen & Mintz, Veterans Administration hearing board officers L. B. Alford, A. J. Moynihan, Rhea M. Burrow, Robert E. Reichmann, Albert Holtz and George Unkeless and attorney Mrs. June Teecher until such time as plaintiff's record is wholely and completely corrected or a time equivalent to that duration.

Respectfully submitted,

BY: _____
MICHAEL S. ROSS

2879 Rutgers Avenue
Long Beach, CA 90815

In Properia Persona

I, _____ am over eighteen years of age and not a party to the within action. My business address is _____

_____ .

I hereby certify, under penalty of perjury, that on the 22nd day of June, 1978, I served the within, "PETITION FOR A WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS," upon the defendants Jerry J. Holst, CDR, Mary L. Brown, CDR, James T. Satchell, Representative Craig Hosmer, James M. Vaisey, Richard Bryson, Green & Pancer, Lincoln N. Mintz, Mintz, Giller, Himmelman & Mintz, Mrs. June Teecher and the United States Of America pursuant to Rule 12 Of the Federal Rules of Appellate Procedure by placing two true copies thereof in the United States mailbox at Long Beach, California, postpaid, addressed as follows:

Commander Jerry J. Holst
2854 Central Avenue
Alameda, California

Commander Mary L. Brown
2944 Alexis Drive
San Francisco, California

For James M. Vaisey

Chase, Rotchford, Drucker & Bogust
22nd Floor
606 South Olive Street
Los Angeles, CA 90014

For Richard Bryson

John Stephens
836 Prospect Street
La Jolla, CA 92037

For Greene & Pancer

Michael Pancer
520 "E" Street
San Diego, California

For American Civil Liberties Union
Fred Okrand
633 S. Shatto Pl.
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Lincoln N. Mintz
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Suite 615
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For Mintz, Giller, Himmelman & Mintz

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For Mrs. June Teecher

Mrs. June Teecher
11969 Ventura Blvd.
Studio City, California

For The United States Of America

Barry J. Trilling
Assistant United States Attorney
1100 U. S. Courthouse
312 North Spring Street
Los Angeles, California 90012

Signed: _____

Subscribed and sworn to before me
this 21st day of June, 1978.

Signed: _____

+ _____
Notary Public in and for the County Of
Los Angeles and the State Of California.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL S. ROSS, Appellant. v. COMMANDER JERRY J. HOLST, U. S. A., et al., Appellees.	)	Nos. 75-2154 75-2155 76-1986

Appeal from the United States
District Court
for the Central District of California

Before: ELY, TRASK, and ANDERSON,
Circuit Judges

Ross appeals from the District Court's dismissal of his tort action for negligence and legal malpractice against the United States, certain agencies, individual officials, and employees of the

United States, and several attorneys. Jurisdiction was alleged to exist under the Federal Tort Claims Act, Title 28 U. S. C., Section 1346, and under 28 U. S. C., Section 1332, diversity of citizenship.

The gravamen of Ross' complaint is that he was illegally and improperly discharged from the armed services of the United States. Ross claims that the alleged illegal discharged, perpetrated and aided by the federal defendants, proximately caused him monetary damages, including the loss of veterans' benefits. He further alleged that the individual attorneys named as defendants negligently failed to inform him, when he consulted them for legal advice, that he had a legal remedy for the military discharge. Ross sought compensatory and punitive damages from all defendants for their allegedly

tortious acts. Ross had previously filed a similar action in 1971 against these and other federal defendants seeking, in substance, to obtain judicial review of a final determination of the Veterans Administration in respect to his discharge. That action was dismissed for lack of subject matter jurisdiction. The dismissal was affirmed on appeal to our court. Ross v. United States, 462 F. 2d. 618, (9th Cir. 1972).

This current action was dismissed by the District Court as to the United States and its various agencies on the grounds that the action failed to state a claim upon which relief could be granted and that the action was further barred by the statute of limitations, res judicata, and collateral estoppel. The action was dismissed as to the remaining federal officials and employees, and the attorneys,

on the grounds that the action failed to state a claim for relief and was barred by the statute of limitations. We affirm the District Court's judgment of dismissal, finding that the applicable statute of limitations barred the appellant's attempted action as to all defendants.

The acts of the United States and its agencies allegedly occurred in 1965, 1966 and 1967. This suit was filed October 25, 1974. Ross had knowledge of his claims, if any, at least as early as 1971, when he filed his prior federal action arising from the same factual background. Ross's claims are barred by the statute of limitations prescribed in 28 U. S. C., Section 2401 (b),[1/] since the action was commenced more than two years after accrual of his claims, and no claim

with the appropriate federal agency was timely filed. Caton v. United States, 495 F. 2d. 635 (9th Cir. 1974); 28 U. S. C., Section 2675 (a).

As to the remaining defendants, the negligence and malpractice of which Ross complains occurred between 1966 and 1971. Ross also had full knowledge of these alleged acts, and the claims arising therefrom in 1971 or before. The applicable statute of limitations in negligence and malpractice actions founded upon diversity jurisdiction such as this is prescribed by state law. The parties appear to agree, and we have no doubt, that California law applies. Section 339 of the California Code of Civil Procedure establishes a limitation period of two years. Thus, Ross's suit is barred because it was filed in excess of two years after the allegedly

wrongful acts.

Since we hold that the applicable statutes of limitations barred the action as to all defendants, we need not comment on the correctness of the other grounds upon which the District Court relied in dismissing the action.

This judgment will issue forthwith, and no petition for rehearing will be entertained. See Fed. R. App. P. 2.

AFFIRMED.